

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
WESTERN DIVISION

UNITED STATES OF AMERICA, ) Docket No. 1:07CR647  
Plaintiff. ) Toledo, Ohio  
v. ) July 12, 2010  
ZUBAIR AND KHALEEL AHMED ) Sentencing  
Defendants. )

-----

TRANSCRIPT OF SENTENCING  
BEFORE THE HONORABLE JAMES G. CARR  
UNITED STATES DISTRICT JUDGE

APPEARANCES:

For the Plaintiffs: Justin E. Herdman  
Thomas E. Getz  
Office of the U.S. Attorney  
801 Superior Avenue, W  
Suite 400  
Cleveland, Ohio 44113  
(216) 622-3840

AND

Gregory N. Sofer  
Office of the U.S. Attorney  
816 Congress Avenue  
Austin, TX 78701  
(512) 916-5854

AND

Jerome J. Teresinski  
U.S. Department of Justice  
10th & Constitution Avenue, NW  
Washington, DC 20530  
(202) 514-7146

1 For the Defendant, Zubair Ahmed:

Andrea L. Whitaker  
2 Terry H. Gilbert  
Friedman & Gilbert  
3 600 Standard Building  
Cleveland, Ohio 44113  
4 (216) 241-1430  
5

6 For the Defendant, Khaleel Ahmed:

Michael Slade  
7 Alyssa A. Qualls  
Kirkland & Ellis  
8 300 North LaSalle Street  
Chicago, IL 60654  
9 (312) 862-2000  
10

11 Court Reporter: Angela D. Nixon, RPR, CRR  
1716 Spielbusch Avenue  
12 Toledo, Ohio 43624  
(419) 260-5259  
13

14 Proceedings recorded by mechanical stenography, transcript  
15 produced by notereading.  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

1

2           COURTROOM DEPUTY: Case number 1:07CR647, United  
3 States of America versus Zubair Ahmed and case number  
4 07CR647, United States of America versus Khaleel Ahmed.  
5 Matter's called for sentencing.

6           THE COURT: Okay. Starting with the government  
7 counsel, if you'll simply identify yourselves for the  
8 record.

9           MR. HERDMAN: Justin Herdman for the United  
10 States.

11           MR. SOFER: Greg Sofer for the United States.

12           MR. GETZ: Thomas Getz for the United States.

13           MR. TERESINSKI: Good morning, Your Honor, Jerome  
14 Teresinski for the United States.

15           THE COURT: And I believe a couple agents are  
16 here.

17           MR. HERDMAN: Yes. Joseph Bertoldi from FBI  
18 Chicago and Shannon Coats from FBI Toledo.

19           THE COURT: Okay. And for the defendants?

20           MR. GILBERT: Terry Gilbert for Zubair Ahmed.

21           MS. WHITAKER: Andrea Whitaker for Zubair Ahmed.

22           MR. SLADE: Good morning, Your Honor. Michael  
23 Slade for Khaleel Ahmed.

24           MS. QUALLS: And Alyssa Qualls for Khaleel.

25           THE COURT: And also present is Ms. Myrna

1 Greenwood from pretrial service and probation office,  
2 although the office who prepared the report is not  
3 available today, Shawna Sizemore.

4 Mr. Herdman, you'll be speaking for the  
5 government?

6 MR. HERDMAN: Yes, Your Honor.

7 THE COURT: Have you received and reviewed the  
8 presentence reports?

9 MR. HERDMAN: I have for both defendants, Your  
10 Honor.

11 THE COURT: And do you have any objections?

12 MR. HERDMAN: I do not.

13 THE COURT: And if not, are you prepared to  
14 proceed with sentencing?

15 MR. HERDMAN: Yes, Your Honor.

16 THE COURT: Mr. Gilbert?

17 MR. GILBERT: Yes, Your Honor.

18 THE COURT: Have you received and reviewed the  
19 presentence report?

20 MR. GILBERT: Yes, Your Honor. We've received  
21 the presentence report, the original one, and we went over  
22 it very carefully with our client, Zubair Ahmed.  
23 Subsequently we sent a letter to the probation officer with  
24 some objections, which were duly noted in the final  
25 version.

1 THE COURT: Okay. And I will go through those in  
2 a moment. Mr. Ahmed, did you read the presentence report?

3 ZUBAIR AHMED: Yes.

4 THE COURT: Did you understand what it says and  
5 what it means?

6 ZUBAIR AHMED: Yes, I do.

7 THE COURT: And don't want to know what you said  
8 to Mr. Gilbert or he or may have said to you, but did you  
9 discuss it with him?

10 ZUBAIR AHMED: Yes.

11 THE COURT: And did he take the time and give you  
12 the attention to answer all your questions?

13 ZUBAIR AHMED: Yes, he did.

14 THE COURT: And are you satisfied that you fully  
15 understand what the report says, and as I said, what it  
16 means?

17 ZUBAIR AHMED: You mean do I understand it?

18 THE COURT: Yes.

19 ZUBAIR AHMED: I'm not satisfied with the report  
20 but I'm satisfied with the fact that I understood it.

21 THE COURT: Now, with regard to dissatisfaction,  
22 has the dissatisfaction that you have, has that been  
23 communicated to me by your attorneys in their objections to  
24 the report?

25 ZUBAIR AHMED: Yes, it has.

1 THE COURT: Okay. In other words, you're  
2 satisfied with what they have done, but not with some  
3 portions of the report; is that correct?

4 ZUBAIR AHMED: Yeah. Yes.

5 THE COURT: Now, your attorneys have represented  
6 you for a long time in this proceeding, and I think from  
7 the outset; is that correct?

8 MR. GILBERT: Yes, Your Honor.

9 THE COURT: And Mr. Ahmed, are you satisfied with  
10 the work that your lawyers have done for you and with you  
11 throughout the entire course of these proceedings?

12 ZUBAIR AHMED: Yes, I am.

13 THE COURT: Okay. Have they given you enough  
14 time and attention to make you feel confident that you and  
15 they have been well prepared for everything that's happened  
16 at every stage of these proceedings?

17 ZUBAIR AHMED: Yes, sir.

18 THE COURT: Is there any way in which you are at  
19 all dissatisfied with anything that they've done for you?

20 KHALEEL AHMED: Could you repeat that?

21 THE COURT: Is there any way that you are  
22 dissatisfied or unhappy with anything that your two lawyers  
23 have done for you?

24 KHALEEL AHMED: I am not dissatisfied.

25 THE COURT: Okay. Okay. And are you prepared

1 for sentencing today?

2 ZUBAIR AHMED: Yes, I am, sir.

3 THE COURT: Mr. Slade, likewise, have you  
4 received and reviewed the presentence report?

5 MR. SLADE: Your Honor, similar to Mr. Gilbert,  
6 we did receive an initial copy of the PSR. We sat down  
7 with Khaleel and discussed it with him in some detail,  
8 communicated a number of objections of the probation  
9 officer, some of which altered the report and others which  
10 are noted at the end of the probation officer's report.

11 THE COURT: Did you discuss it with your client?

12 MR. SLADE: Our office did discuss the PSR with  
13 Mr. Ahmed extensively, yes.

14 THE COURT: Okay. And your office being  
15 co-counsel?

16 MR. SLADE: One of my colleagues was the primary  
17 person discussing it with Mr. --

18 THE COURT: And who was that, just for the  
19 record?

20 MR. SLADE: Alex Solotorovsky.

21 THE COURT: Mr. Ahmed, did you see a copy of the  
22 presentence report?

23 KHALEEL AHMED: Yes, Your Honor.

24 THE COURT: Did you read it?

25 KHALEEL AHMED: Yes, sir.

1           THE COURT: Did you understand what it says and  
2 what it means?

3           KHALEEL AHMED: I understood what it says.

4           THE COURT: Did you have an opportunity to go  
5 over the report with one or more attorneys representing  
6 you?

7           KHALEEL AHMED: Yes, I did.

8           THE COURT: And did that lawyer take the time and  
9 give you the attention sufficient to answer any questions  
10 you might have had about the presentence report?

11          KHALEEL AHMED: Yes, they did, Your Honor.

12          THE COURT: And are you satisfied with the  
13 lawyer -- lawyers have taken enough time to prepare you and  
14 them for sentencing today?

15          KHALEEL AHMED: Yes, sir.

16          THE COURT: And as I asked your cousin, have your  
17 lawyers done so, in other words, have they taken the time  
18 and given you the attention in case -- the attention that  
19 you wanted them to give throughout the entire course of  
20 these proceedings?

21          KHALEEL AHMED: Yes, that's fine.

22          THE COURT: And is there any way that you're not  
23 happy with what they've done with and for you in this case?

24          KHALEEL AHMED: I am satisfied with everything.

25          THE COURT: You think that they've done all that

1 they can and do done so well on your behalf?

2 KHALEEL AHMED: Yes, Your Honor.

3 THE COURT: Okay. Mr. Slade, are there any  
4 unresolved objections with regard to your client?

5 MR. SLADE: Yes, Your Honor. Those are set forth  
6 at the end of the probation officer's report.

7 THE COURT: Let's turn to those first. Looking  
8 at page 23 of the report.

9 MR. HERDMAN: Your Honor --

10 MR. GILBERT: Your Honor, are you referring to --

11 THE COURT: I'm referring to Khaleel Ahmed.

12 MR. SLADE: Your Honor, I believe the unresolved  
13 objections appear at the bottom of page 24.

14 THE COURT: Well, with regard to the first, I  
15 simply noted that, and I understand what you're saying  
16 that's on page 23. It's my understanding with regard to  
17 objection number one, the unresolved one that they have on  
18 page 24 is that basically the parties have agreed and  
19 stipulated in the plea agreement to the applicable  
20 sentencing guideline, applicable provision of sentencing  
21 guidelines and resulting base offense level computations.  
22 It's also my understanding that under Rule 11, 1(c)1, that  
23 I am bound by those agreements. Mr. Herdman, would you  
24 agree with that?

25 MR. HERDMAN: I would, Your Honor.

1 THE COURT: Mr. Slade, would you agree with that?

2 MR. SLADE: I do, Judge, thank you.

3 THE COURT: So I will have to -- I will find that  
4 the objection is well taken, and I will abide by the  
5 computations as agreed to by the parties.

6 MR. SLADE: Your Honor, I believe it's the same  
7 identical issue for objection two.

8 THE COURT: Okay. So Mr. Herdman, likewise, is  
9 that parties have agreed to essentially what the maximum  
10 term of supervised release is three years?

11 MR. HERDMAN: That is what we agreed to.

12 THE COURT: So it's your contention and  
13 representation that I am bound by that agreement --

14 MR. HERDMAN: Yes, Your Honor.

15 THE COURT: -- between the parties? Okay. And  
16 then it's my understanding the plea agreement between the  
17 parties is -- the total base offense level is 23, and the  
18 criminal history category was six; is that correct,  
19 Mr. Herdman?

20 MR. HERDMAN: As for Khaleel Ahmed, yes.

21 THE COURT: Yes, let's make that clear. And  
22 again, Mr. Slade, that's --

23 MR. SLADE: Your Honor, that's correct.

24 THE COURT: Okay. And that would result in a  
25 advisory guideline range of 92 to 115 months; is that --

1 MR. HERDMAN: Yes.

2 MR. SLADE: Yes, Your Honor.

3 MR. HERDMAN: Your Honor, I should point out  
4 that -- that base offense level envisions the triggering of  
5 certain provisions within the plea agreement, motion by the  
6 government as well.

7 THE COURT: I understand that. Okay. Are there  
8 any other objections --

9 MR. SLADE: None, Your Honor.

10 THE COURT: -- unresolved.

11 MR. SLADE: They're all set forth in the PSR.

12 THE COURT: Mr. Gilbert and Mrs. Whitaker with  
13 Zubair Ahmed, I believe those objections begin on page 26?

14 MR. GILBERT: Yes, Your Honor. It's on our  
15 report. It's objection number three regarding the same  
16 issue of the guideline calculations.

17 THE COURT: And obviously the same ruling.

18 MR. GILBERT: Same ruling, and also objection  
19 number four is the term of supervised release.

20 THE COURT: Same situation, same ruling, correct?

21 MR. GILBERT: Correct.

22 THE COURT: Okay. And what else remains  
23 unresolved?

24 MR. GILBERT: Your Honor, there are a number of  
25 relatively minor factual objections that are listed.

1 THE COURT: Starting at page 26?

2 MR. GILBERT: Page 24.

3 THE COURT: Can I see your copy because mine's  
4 number 26. Okay. I'm going to go through these one by  
5 one, paragraph eight.

6 MR. GILBERT: Your Honor, let me just  
7 preliminarily state that many of these objections are  
8 derived from a previous indictment in the manner that was  
9 dismissed. And so when I went over the presentence report  
10 with my client, there were certain things that we felt that  
11 were either inaccurate or there were competing versions  
12 that nuances. For example, there was a firearm for example  
13 that was --

14 THE COURT: Paragraph eight?

15 MR. GILBERT: -- purchased after -- after he was  
16 already represented by counsel in this matter in Chicago.  
17 And it was returned, and it was -- we don't really believe  
18 it had anything to do with this case.

19 We also believe that there was references to  
20 steroids, somehow that was alleged to have been part of the  
21 bearing on the conspiracy of the plan. Zubair had been a  
22 body builder, or he had been into exercise and he had done  
23 this notwithstanding whatever allegations were in this  
24 case. Going to the shooting range, he went with friends  
25 that were not part of this case for a day of recreation. I

1 mean, can it be used as evidence in a trial? Probably.  
2 But he wanted me to indicate that there were other reasons  
3 for it as well. And since this report goes to the Bureau  
4 of Prisons, we wanted to at least reflect that there was  
5 some alternative notions with respect to those allegations.  
6 But once again, they did come from a charging instrument  
7 that had been dismissed. And we believe that the factual  
8 basis of the plea agreement should really form the nucleus  
9 of facts in this case.

10 MR. HERDMAN: Your Honor, can I just respond?

11 THE COURT: If I may, those are principally, it  
12 seems, recitations of the indictment which, candidly, is  
13 not particularly helpful. Here I am, and here he is.

14 MR. HERDMAN: And I think the indictment has not  
15 been dismissed yet. It was to be dismissed on the date of  
16 sentencing, so it is still a superceding indictment that  
17 forms the basis. It was the initial indictment in this 647  
18 case that has not been dismissed yet, and so therefore, the  
19 document's still, I would say, relevant, however helpful it  
20 may or may not be.

21 THE COURT: My inclination, I'll go through this  
22 one by one, but my inclination in situations like this, I'm  
23 not going to pay any attention to whatever misinformation  
24 or misinterpretation you find bothersome, won't play a role  
25 in my sentence.

1           MR. GILBERT: I understand. And we felt -- we  
2 felt compelled to put this in our objections. I mean,  
3 there was some references to certain, like, suicide vest  
4 construction which he had nothing to do with. Some of this  
5 information might have applied to other previous  
6 co-defendants and things like that. And if you read this,  
7 it might look like he's worse than he really is. And so I  
8 think it needs to be put into prospective. It's in there.  
9 It's noted. The Court can disregard it as it's indicated  
10 and that's fine.

11           THE COURT: Okay. Let me go through these. To  
12 the extent it has any bearing with regard to the attempt to  
13 purchase a firearm, and I'll accept the representation that  
14 there's legitimate purposes for doing so. And in any  
15 event, I'm not going to pay any attention to that  
16 statement. The challenge -- same, I will take cognizance  
17 of the objection or statement in paragraph 9 that training  
18 and so forth, it's not exclusively geared towards engaging  
19 in Jihad, and I will accept that representation, and I will  
20 disregard any suggestion to the contrary.

21           The same, I will with regard to paragraph 10, I  
22 will simply base my sentence on the understanding that that  
23 activity had nothing to do with preparing for Jihad.

24           And I will accept paragraph 11 as an accurate  
25 representation of the situation and disregard anything to

1 the contrary.

2 Likewise with paragraph 18.

3 And I will also accept the representation as  
4 being accurate in paragraph 21 and disregard any suggestion  
5 to the contrary to PSI.

6 MR. HERDMAN: Your Honor, I apologize. I'm just  
7 trying to clarify with respect to the findings that you're  
8 making right now, these are essentially -- my understanding  
9 what you're doing is that you are essentially saying your  
10 sentence is not going to rely on the facts for the  
11 objections that have been noted with respect to these  
12 particular paragraphs that are in the indictment, which the  
13 government will concede that is not all that helpful --

14 THE COURT: That's correct.

15 MR. HERDMAN: -- in finding a factual -- the  
16 factual findings you have to make with respect to sentence.  
17 But we obviously -- we have a different take on the facts  
18 as they were --

19 THE COURT: The problem is, the only facts that  
20 I've got from the government are the recitation in the  
21 indictment. And to resolve these with factual findings as  
22 to which is true and which is not true, I would have to sit  
23 down and conduct a series of hearings, take evidence, and  
24 make a ruling, and I'm not about to do that.

25 MR. HERDMAN: Nor are we.

1           THE COURT: I'm simply saying, given the fact  
2 that all I have from the government is the indictment, I'm  
3 going to favor the defendant by accepting his  
4 representations. And where they conflict, I will accept  
5 his representations as accurate and will disregard  
6 anything -- any assertion of fact or inference to the  
7 contrary that may be found in the indictment. The  
8 indictment's just a charging instrument. It's not proof of  
9 anything.

10           MR. HERDMAN: And we also do intend, Your Honor,  
11 to rely on the facts that were in the sentencing memorandum  
12 which were submitted which were a little more descriptive  
13 with respect to the conduct of the offense.

14           THE COURT: I understand. But I believe under  
15 the guidelines, when confronted with objections that would  
16 apply to a great deal of time and taking of testimony to  
17 resolve them, and these would, and wind up having a week or  
18 two's worth of trial, a week or three or four days or  
19 whatever doesn't seem to make any sense because I don't  
20 think any of them really ultimately are material or will  
21 have any effect on my sentence one way or another.

22           MR. HERDMAN: Okay. Thank you.

23           THE COURT: What matters to me is what is  
24 contained in the plea agreement. Certainly with regard to  
25 paragraph 22 and 23, paragraphs 22 and 23, that's my

1 recollection of the evidence, that at one point after the  
2 initial contact between the Ahmed cousins and Mr. El-Hindi  
3 and others, they kind of wandered away and, despite the  
4 urgings of the government's agent, no further contact was  
5 had, is that correct, Mr. Gilbert? That's my recollection.

6 MR. GILBERT: There was a possibility of having  
7 further contact, but it never materialized.

8 THE COURT: It never materialized. Yeah.

9 MR. HERDMAN: There was a telephone call, Your  
10 Honor, which was pointed out in the sentencing memorandum,  
11 but there was no face-to-face contact.

12 THE COURT: Right. There were no specific  
13 arrangements to meet, and there was no firearm instruction  
14 on July 4th. There was some talk about weapons and  
15 shooting machine guns and all that. Okay.

16 Paragraph 36 I'll accept that as accurate.

17 Paragraphs 37, 38, 39, once again, I'll accept  
18 that there were a variety of subject matters, including  
19 those which were entirely innocent and had nothing to do  
20 with Jihad. There was -- and I think paragraph 45 is  
21 correct. Isn't that what the evidence showed, that is the  
22 only individual who's with Zubair Ahmed at the convention  
23 in Cleveland and was part of the conspiracy is  
24 Mr. El-Hindi, that's correct?

25 MR. HERDMAN: Other than Mr. Griffin?

1 THE COURT: That's right.

2 MR. GILBERT: I didn't count him.

3 MR. HERDMAN: And Khaleel Ahmed was there as  
4 well.

5 THE COURT: I understand, but he never met  
6 Mr. Mazloun or Mr. Amawi.

7 MR. HERDMAN: No.

8 THE COURT: That's correct. I'm going to accept,  
9 as I think I already have, the representation that the  
10 purpose was lawful and legitimate for purchasing or trying  
11 to purchase a firearm. I think it's also fair to at least  
12 have a sense that whatever experience he may have gained  
13 with that, had he, in fact, gained much in the way of  
14 experience might the fact that the endeavor which brings us  
15 here, but certainly I accept the fact and representation  
16 that ab initio the purchase was for legitimate purchase.

17 Mr. Gilbert, does that all satisfactorily resolve  
18 your objections? If not, let me know.

19 MR. GILBERT: There is 53, Your Honor.

20 THE COURT: I'm sorry. Okay. I'm going to  
21 accept the accuracy of that --

22 MR. GILBERT: That would then --

23 THE COURT: -- representation.

24 MR. GILBERT: That would then conclude our  
25 objections.

1           MR. HERDMAN: If I may interject, I was playing  
2 catch up there, I apologize. With respect to paragraph 23,  
3 I did just want to point out that the defendants, in their  
4 plea agreement, conceded with respect to the facts that  
5 they did receive firearms instructions on July 4th, 2004  
6 from Darren Griffin.

7           THE COURT: Well, if that's in the agreement,  
8 then that's binding and I can't change it. I will abide by  
9 whatever the agreement says. And my recollection, and  
10 there was a fair amount at trial about that was that they  
11 certainly didn't, you know -- I don't think there were any  
12 weapons displayed.

13           MR. HERDMAN: It was much more nuance  
14 instruction, Your Honor, and I can explain that if --

15           MR. GILBERT: It depends how you define  
16 instruction.

17           MR. SLADE: Your Honor, I think you're right that  
18 the entirety of the conversation that the government's  
19 talking about, we're talking about, and you're talking  
20 about was viewed during the Amawi trial a number of times,  
21 so I think everybody knows what was said and what wasn't  
22 said during that conversation.

23           THE COURT: I'll tell you what, I'm going to  
24 interpret the parties' agreement as binding me to the  
25 evidence that was produced in that regard with the Amawi

1 trial.

2 MR. GILBERT: Thank you.

3 THE COURT: Mr. Herdman and Mr. Gilbert, does  
4 that resolve the objections, and does it do so in a way  
5 that is satisfactory to both of you?

6 MR. GILBERT: Yes, Your Honor, from the  
7 standpoint of Mr. Zubair Ahmed.

8 MR. HERDMAN: And same here.

9 THE COURT: And Mr. Slade, likewise, and  
10 Mr. Herdman, with regard to the objections on behalf of  
11 Khaleel Ahmed?

12 MR. SLADE: We're prepared for sentencing, yes.

13 THE COURT: But you're content with my resolution  
14 of the objections?

15 MR. SLADE: We are.

16 THE COURT: Mr. Herdman?

17 MR. HERDMAN: Yes, Your Honor, given the  
18 clarification. Thank you.

19 THE COURT: Okay. Let's hear from Mr. Herdman  
20 first with regard to Zubair Ahmed.

21 MR. HERDMAN: Your Honor, do you want to handle  
22 the government's motions at this point in time, or do you  
23 want to wait until --

24 THE COURT: I think so. I mean, at least in  
25 terms of the 5(K) motion, I think it's appropriate to be

1 made now. It's my practice, any dismissal motions in the  
2 indictment or whatever come at the end after sentence has  
3 been pronounced.

4 MR. HERDMAN: With respect to Zubair Ahmed, Your  
5 Honor, the government is prepared, and does at this point  
6 in time, move under U.S. Sentencing Guideline 5(K) for a  
7 departure of 13 levels off the -- in accordance with the  
8 plea agreement. So that would bring the offense level down  
9 to a 27. And government would also move at this point in  
10 time under the guidelines with respect to acceptance of  
11 responsibility and acknowledge Zubair Ahmed's acceptance of  
12 responsibility.

13 THE COURT: I don't think Mr. -- excuse me, and  
14 of course that motion will be granted. And I don't think  
15 that I -- I certainly should, that on granting of that  
16 motion, that results in a total offense level of 24,  
17 criminal history category of 6; is that correct?

18 MR. HERDMAN: Yes, Your Honor.

19 THE COURT: And that results in a guideline range  
20 of about 100 to 125 months; is that correct?

21 MR. HERDMAN: Yes.

22 MR. GILBERT: That's correct.

23 THE COURT: Give me one second. Okay.

24 Mr. Herdman --

25 MR. HERDMAN: Your Honor, the government is

1 recommending and requesting a sentence of 120 months  
2 imprisonment as to Zubair Ahmed. And much of what I have  
3 to say goes to both defendants, but in terms of the conduct  
4 in this case, which is really government's position --

5 THE COURT: And let me just, before you go any  
6 further, let me just -- I apologize for interrupting, but I  
7 just want the record to be clear that there is nothing in  
8 the plea agreement that restricts your ability to make  
9 whatever recommendation you want to, provided it is within  
10 the guideline range.

11 MR. HERDMAN: That's correct, Your Honor.

12 THE COURT: Mr. Gilbert; is that correct?

13 MR. GILBERT: That is correct.

14 THE COURT: Which is no breach of the agreement  
15 that's occurring because the government is not remaining  
16 silent.

17 MR. GILBERT: We agree.

18 THE COURT: Okay. Go ahead.

19 MR. HERDMAN: The nature and circumstance of the  
20 offense in this case are of the highest severity, Your  
21 Honor. As the plea agreement sets out, as the facts that  
22 were stipulated to both parties in the agreement sets out,  
23 these defendants, and especially Zubair Ahmed, over the  
24 course of years, this was not a case where it was, I know  
25 it's been tried, defense counsel at times characterized it

1 as sort of a fleeing decision to travel overseas or a  
2 one --

3 THE COURT: Yeah, but it was a very deliberate  
4 decision. And the objective of what but for the  
5 interception by Mr. El-Hindi and the father of one of the  
6 defendants in Cairo would have been accomplished.

7 MR. HERDMAN: Yes, Your Honor. I don't want to  
8 go too far --

9 THE COURT: Who knows what would have happened  
10 after that. But on the other hand, the venture would have  
11 continued.

12 MR. HERDMAN: Yes.

13 THE COURT: And it was a venture that obviously  
14 had a dangerous and deadly --

15 MR. HERDMAN: Yes.

16 THE COURT: And it was a venture that was  
17 deliberately undertaken.

18 MR. HERDMAN: And the intent was to kill members  
19 of the United States military.

20 THE COURT: I think that's undisputed.

21 MR. HERDMAN: And as you correctly pointed out,  
22 this was a decision to travel overseas that did not just  
23 arise instantly. It required planning. And it required  
24 discussions.

25 THE COURT: And also it is not one to which

1 either defendant can point and say take Darren Griffin out  
2 of it and there's no -- as Mr. Hartman said on behalf of  
3 his client.

4 MR. HERDMAN: That's exactly right. These  
5 defendants independently came to this decision. Marwan  
6 El-Hindi went over in Cairo, brought them back to the  
7 United States, and instead of giving up on this ambition to  
8 engage in violent Jihad against members of the U.S.  
9 military, these defendants went and met with Darren  
10 Griffin, a self-avowed extremist, a former member of the  
11 U.S. military who did provide firearms instruction on  
12 July 4th. And it was very nuance, as I said, but I think  
13 it's important that The Court take that into account  
14 because in that July 4th conversation, Darren Griffin told  
15 Zubair and Khaleel Ahmed that they should start training  
16 with a .22 caliber handgun, that's how they should begin  
17 their training. That was July 4th, 2004, Your Honor. 18  
18 months later in February of 2006, Zubair Ahmed and Khaleel  
19 Ahmed discuss the fact that Darren Griffin had brought up  
20 the .22 caliber handgun when they were discussing amongst  
21 themselves what handgun they should purchase. And Zubair  
22 Ahmed is the one who recollected the fact that Darren  
23 Griffin had told them to start off with a .22 caliber  
24 handgun. So that -- the reason the government felt it was  
25 so important to point out there was instruction provided to

1 the defendants on July 4th because that, in fact, kept it  
2 in the recesses of their mind and pulled it out at a very  
3 crucial moment. And the date of that telephone, Your  
4 Honor, was actually the same date that in Toledo Marwan  
5 El-Hindi was being arrested. The defendants did not know  
6 at that point in time he was being arrested. It was  
7 coincidence, but that's the same day that they discussed  
8 it. After the arrest of Marwan El-Hindi, obviously the  
9 defendants changed at least the overt acts they were taking  
10 with respect to violent Jihad.

11 But to get back to the July 4th meeting, it was  
12 important, and I think the government would have to concede  
13 on some level that the defendants didn't meet up with  
14 Darren Griffin, and they didn't continue their discussions  
15 with Marwan El-Hindi. And the government's position is  
16 that they did that because the only people they could trust  
17 were each other, and to some extent Syed Haris Ahmed, who  
18 was down in Atlanta. And that gives rise to the reason why  
19 these defendants are being charged in a separate case. It  
20 was very apparent as we, the government, reviewed the  
21 evidence that you've considered in the Amawi trial, that  
22 these defendants were separate conspirators.

23 THE COURT: There was a linkage.

24 MR. HERDMAN: Two separate conspiracies that  
25 touched maybe over a period of time, but the defendants

1 went on in their own separate conspiracy, and they did not  
2 give up this Jihadist ambition. Zubair Ahmed, as you may  
3 recall from the July 4th meeting with Darren Griffin,  
4 discussed a five-year plan, and that's set out in the  
5 indictment. But this five-year plan encompassed a number  
6 of different steps that would have to be taken.  
7 Culmination of a five-year plan was to engage in violent  
8 Jihad overseas, at least go overseas and put themselves in  
9 a position where they could realize these violent Jihad.  
10 The interaction with Syed Haris Ahmed is pointed out in the  
11 plea agreement and is very crucial with respect to the fact  
12 that these defendants -- Zubair Ahmed was the defendant who  
13 had the most contact with Syed Hair Ahmed -- but these  
14 defendants sought out, like, younger individuals, in fact,  
15 who were putting themselves in position to go overseas and  
16 engage in the exact same type of activities that the  
17 defendants wished to engage in. And Zubair Ahmed's  
18 interaction with Syed Haris Ahmed was quite extensive, and  
19 it lasted at least up until the arrest of Marwan El-Hindi,  
20 and probably a little bit after that as well.

21 Syed Ahmed was arrested in the spring of 2006  
22 following the arrest in the Amawi case. But this was over  
23 the course of several years Zubair Ahmed cultivated this  
24 relationship with Syed Haris Ahmed. And the whole purpose  
25 of it was to go overseas and to engage in violent actions

1 against members of the U.S. military or to engage in Jihad.

2 I did want to just briefly address this purchase  
3 of the handgun in the fall of 2006. As the plea agreement  
4 makes clear, defendants, throughout the course of the  
5 conspiracy, used code words. They frequently spoke in a  
6 foreign language, Urdu, which is a less commonly spoken  
7 language, and they did that with the intent to evade  
8 government surveillance. And the handgun, I will concede,  
9 could have had some legitimate purpose to it; however,  
10 these defendants discussed that handgun purchase using code  
11 words. And there may be legitimate purposes just like  
12 there may be legitimate purposes for going to the shooting  
13 range, but I would submit all this activity was geared,  
14 even after the arrest of Marwan El-Hindi, all of it was  
15 geared toward the possibility of fulfilling this conspiracy  
16 that these 12 defendants had arrived at together, which was  
17 to go overseas and kill members of the U.S. military.

18 And finally, as the sentencing memorandum makes  
19 clear upon the arrest of Zubair Ahmed -- I'm sorry,  
20 February of 2007, there was an external hard drive that was  
21 seized that contained a number of manuals that related to  
22 small arms, weaponry, videos that related to Jihadist  
23 attacks as well as some literature on Jihad, some  
24 ideological prospectives with Jihad, all of which would be  
25 important, all of which were in this external portable hard

1 drive.

2 So to get back to the nature and circumstances  
3 with which I think is where this is, where the government's  
4 argument essentially lies, Your Honor, is that this is the  
5 highest severity. These were defendants who agreed and  
6 over the course of several years set out to go overseas and  
7 kill members of the U.S. military. That was their intent.  
8 That was their objective. Defense counsel in their  
9 sentencing memorandum, as I read them, tried to compare  
10 this case to that of Wassim Masloun. I'm sure that you  
11 read that. And I can understand why they did that.

12 THE COURT: I will hear from them, but I  
13 understand what you're saying. I intend to go -- on that.  
14 But Masloun was obviously the least engaged and did the  
15 most kind of wonder away, and so far, as anybody knows, had  
16 nothing to do with -- anything to do with whatever may have  
17 been on his mind. There was communication with  
18 Mr. Griffin, Mr. Amawi and Mr. El-Hindi. I can't remember  
19 if he was with all three. I just don't recall. The  
20 impression I got from Mr. Masloun is he went about the  
21 business of selling cars and going to school.

22 MR. HERDMAN: That's correct. And I --

23 THE COURT: So far as we know.

24 MR. HERDMAN: I don't want to rehash all of the  
25 Masloun argument, but generally what I would say is this,

1 and I think that, Your Honor, when you actually  
2 sentenced --

3 THE COURT: Time out. I can see a similarity  
4 vis-a-vis meeting in Cleveland and then Griffin kept  
5 saying, well, what about the boys in Chicago, we've got to  
6 get in touch with them. Nothing happened. But quite  
7 candidly at this point, that's the extent of any  
8 similarity.

9 MR. HERDMAN: What I was going to say, Your  
10 Honor, is during the sentencing of Mr. Mazloun, I think you  
11 pointed out to the fact, which is in stark contrast to what  
12 these defendants did, the way you put it -- if you'll give  
13 me just a moment I want to read this into the record --  
14 that with respect to Mr. Masloun and his activity, you said  
15 just as quickly and brilliantly as that flame flared up, I  
16 truly believed that it was extinguished or certainly  
17 flickered and has flared out. And without making any  
18 concessions as to whether or not that is the case with  
19 Masloun or that's the government's position with Masloun, I  
20 think these defendants are in stark contrast to that  
21 statement that you made about Mr. Masloun -- Mr. Masloun's  
22 activity in that other conspiracy --

23 THE COURT: Things continue to glow.

24 MR. HERDMAN: Yes, the ambers were more than  
25 ambers, it was a flame and it burned for several years with

1 respect to Zubair and Khaleel Ahmed.

2           The other point I wanted to make with respect to  
3 Mr. Masloun, this is a more subtle point. He is not a U.S.  
4 citizen, and I know that was a factor that you considered  
5 in sentencing Mr. Masloun. Both of these defendants are  
6 citizens. Overall, that is an entirely separate case and  
7 entirely different conduct. As similar as they may be, I  
8 think, as you pointed out, the closest interaction is the  
9 extent of the interaction with Darren Griffin. But with  
10 respect to the planning that these defendants did and the  
11 conspiracy that existed between these two defendants, it's  
12 an entirely different matter, I would submit.

13           And the plea agreements also set out, Your Honor,  
14 that there is -- Zubair Ahmed is at a different level with  
15 respect to his offense conduct. He's at a 24 as opposed to  
16 Ahmed's at a 34. And that is just another factor that I  
17 think goes into this and into the sentencing decision on  
18 what to make.

19           However, the primary factor is the nature and  
20 circumstances of the offense. Zubair Ahmed is obviously a  
21 very capable individual. He's attended numerous  
22 educational instructions. He had a number of options and  
23 opportunities available to him, and the one he elected and  
24 felt compelled to engage in is Jihad as opposed to  
25 legitimate business opportunities. He wanted to engage in

1 violent Jihad overseas and kill members of the U.S.  
2 military. For that reason I realize that the guideline  
3 range we're working with here is a difference of about 25  
4 months from the lowest end to the highest end. But based  
5 on the severity of the conduct, based on the opportunities  
6 that were given to this defendant throughout his life and I  
7 think all of the materials that have been submitted to The  
8 Court would suggest that this was a person who had  
9 significant opportunity, the choice that he made and the  
10 crime that he committed, all of them lean themselves of a  
11 recommendation of 121 months in this particular sentence.

12 THE COURT: Mr. Gilbert?

13 MR. GILBERT: Your Honor, obviously we have a  
14 number of areas to go into today. First of all, I want to  
15 indicate to The Court that Zubair's family is here today.  
16 His father, his mother, his sister Jasmine, who just  
17 graduated from medical school in Europe, his younger sister  
18 Sammy. They have been staunch, emotional and physical  
19 support for him from day one in this process.

20 This process, as you indicated, has gone on for  
21 three years, over three years actually. And I remember the  
22 first time we met in this courtroom. There was somewhat of  
23 a contentious debate over whether or not these two young  
24 men would be released on bond. The Court was able to see  
25 the roots that my client has in the community of Chicago,

1 not only in terms of his family but extended family,  
2 friends, his educational activities, his work history, et  
3 cetera. You took a gamble back then as far as in a case of  
4 this nature which, you know, creates a lot of emotion in  
5 the community and the public at large. You took a gamble  
6 on allowing them to be released on home detention. And  
7 that gamble proved that what you had hoped would occur in  
8 terms of their allegiance and accommodating the probation  
9 pretrial services, et cetera, that it wasn't -- it could  
10 have been easier just to put them in pretrial detention.  
11 But they continued, my client continued to look forward and  
12 not backward. He just didn't waste his time sitting in a  
13 house. He continued his education, continued to help  
14 around with his family, provide the support for his mother,  
15 and worked on a masters degree all this time, and actually  
16 hoped to have been married by this point, but he -- and  
17 that's why he stayed out, by the way, Your Honor, and  
18 didn't self surrender earlier. He could have had a  
19 significant period of time behind him.

20 THE COURT: I understand that.

21 MR. GILBERT: So I wanted The Court to know that.  
22 We would ask The Court to impose the minimum. I'm sure  
23 that's not a surprise to you. We really feel that that is  
24 more than adequate to serve the principles and philosophy  
25 of sentencing in this case. We know there are no criminal

1 history points here, but for this unfortunate series of  
2 acts and circumstances. Here was a young man who  
3 exemplified good behavior in the community. And I don't  
4 want to dwell on all the facts of the case, and I certainly  
5 don't want to throw up a defense at this point to his  
6 behavior. He has pled guilty, acknowledged his role. You  
7 read the statement that he gave to the probation officer  
8 where essentially he has come to grips with the fact that  
9 his thinking process in the years 2004, 2005 and going into  
10 2006, was completely wrong, full hearted, distorted. And  
11 if there was anything that he could do more to show his  
12 regret and remorse and to atone for what he did back then,  
13 he would do it. There's nothing more that he can do to  
14 demonstrate to The Court more than what he's already done.

15           You know, I know the government's position in  
16 here was this was a dangerous, well-thought-out conspiracy,  
17 that had it continued would have caused unknown harm and  
18 perhaps death to American soldiers. And certainly that was  
19 the intent. I don't dispute that for one moment. But the  
20 plan is different than the intent, and the actions, while  
21 indicative of the intent, did not play out in a way that  
22 was sophisticated or developed to an extent that it might  
23 have gone the way the government thought it would go. I  
24 mean, you have -- you have a couple of young guys here who  
25 basically bought into this idea of Jihad because of their

1 naivety. You've got to remember, 2003, 2004 is not today  
2 in 2010. They are not the same people. They were  
3 youngsters back then, essentially. They started  
4 legitimately studying Islam to further their knowledge of  
5 their religion, and they were not raised this way. They  
6 came from families that bought into the American dream who  
7 gave their --

8 THE COURT: And have, if I understand correctly,  
9 otherwise prospered in various ways.

10 MR. GILBERT: Prospered. The father and the  
11 mother came over from India and Pakistan with nothing,  
12 working jobs, selling hot dogs on the street, building up  
13 some money to eventually get into a business, finishing the  
14 education. This is the kind of values they instilled on  
15 Zubair. And Zubair essentially took up that call and went  
16 to school. He went to a catholic school. He went to  
17 various colleges, he worked. There is more to him than the  
18 indictment or the information or the presentence report  
19 account of what he did.

20 THE COURT: Yes, but of course it's that aspect  
21 of him that brings us here. I understand.

22 MR. GILBERT: That's right. So I guess what  
23 we're arguing about here, or not arguing but --

24 THE COURT: No, what you're --

25 MR. GILBERT: -- discussing.

1           THE COURT: One is trying to push me up and the  
2 other is trying to pull me down in terms of the range. I  
3 understand.

4           MR. GILBERT: They decide, okay, we're going to  
5 go to Egypt, and maybe we'll find somebody that will help  
6 us get into Pakistan. I mean, they had no contacts with  
7 any organization or any specific individual who was a  
8 member of an insurgent group or terrorist organization.

9           THE COURT: A little like me going to Belfast and  
10 raising my hand or going to London and raising my hand for  
11 a trip to --

12          MR. GILBERT: They go to a travel agency, they  
13 buy tickets, and they hide this from their parents, and the  
14 day after they wound up not being at home, their mother's  
15 on the phone. They go to the Chicago Police Department and  
16 enter a missing person's report. They're still under the  
17 auspices of their parents at this stage. And of course  
18 because of this family integrity, it didn't take long to  
19 find them. It didn't take long to find out that they were  
20 halfway around the world in a city of multi-millions of  
21 people and find them within a few days. And on one hand  
22 you could say, well, but for that, you know, ability to get  
23 them out, they would have continued. Who knows where they  
24 would have gone. But it was a far cry from Islamabad or  
25 the western region of Pakistan. I mean, to get to a

1 terrorist camp and all that, I mean, we can argue back and  
2 forth how possible that would have been, but nonetheless,  
3 that was their intent. There's no question about it. But  
4 it was an ill-conceived venture. And they did not put up a  
5 fight when Mr. Ahmed showed up with Marwan El-Hindi and  
6 Youseff, the one that came from the medical school in  
7 Slovakia. They spent the next week or so touring -- as  
8 tourists riding camels. We have pictures of that and that  
9 kind of thing, and then they came home. And you know,  
10 unfortunately they should have just stopped right there.  
11 You know what I mean? If we had our way about it looking  
12 back, that's what we would have hoped they have done.

13 But I just want to make a comment on the  
14 July 4th ICNA conference. As far as I understand, they  
15 went to this conference to promote the medical school in  
16 Slovakia that Marwan's brother was sponsoring and trying to  
17 recruit students. This is -- this ICNA conference was a  
18 public conference, open, not some secret meeting.

19 THE COURT: It wasn't the cell?

20 MR. GILBERT: It wasn't the cell in some safe  
21 house. They -- they were there for the legitimate purpose.  
22 Mr. Herdman, you know, kind of made it look like they went  
23 there to meet with the trainer. The trainer idea came  
24 about as they were in the process of going or getting  
25 there. And in fact, they didn't meet him the first day.

1 They actually met him in an innocuous meeting, and then it  
2 wasn't until I think the day afterwards that they actually  
3 had this 20-minute conversation about training, and you  
4 know the details.

5 THE COURT: Sure, I saw the pictures.

6 MR. GILBERT: And beyond that, beyond that trip  
7 to Egypt, nothing really materialized in terms of actual  
8 acts other than communication from that point on. It was  
9 either all Internet interactions with each other, phone  
10 conversations with each other and Internet and phone --  
11 Internet actions with Syed Haris who wanted Zubair and  
12 Khaleel, I guess, to go meet him either in Georgia. And  
13 Syed Haris went off and did all kinds of bad things during  
14 that period, but Zubair never joined him. It was just  
15 talk, and there was a lot of talk about many things that  
16 young people talk about, family, education, games, things  
17 like that. I mean, it wasn't just only during that period  
18 about, you know, Jihad. And yes, there was talk about a  
19 five-year plan. But when you look at this case, the  
20 totality of the circumstances, you have a period of time  
21 where there were multiple interests that Zubair had, one of  
22 which was the idea of engaging in Jihad, but it never got  
23 too far.

24 And, you know, as a defense lawyer, I look at the  
25 guidelines, I look at these numbers, and I see they're just

1 off the charts. And when you really look at this  
2 individual and see that at this point in life, the  
3 opportunities and the potential that he has, how much  
4 punishment is really needed to do the things that are  
5 necessary to satisfy the purposes of sentencing as well as  
6 to give them a chance to be a productive member of society.  
7 He did get one point more than Khaleel, and I actually  
8 think that the two of them were in this together for the  
9 most part. As cousins they've known each other, or just  
10 that Zubair has better command of the language, has more  
11 education.

12 THE COURT: Actually, they became acquainted at a  
13 wedding or something.

14 MR. GILBERT: Pardon?

15 THE COURT: I thought they had become acquainted  
16 at a wedding. In other words, they hadn't really known  
17 each other on a life-long basis, am I wrong about that?

18 MR. SLADE: Your Honor, they had met once at a  
19 family wedding prior to Khaleel's arrival in the U.S.

20 THE COURT: Right.

21 MR. GILBERT: But what I mean in the relative  
22 time period, they were very close.

23 THE COURT: I understand.

24 MR. GILBERT: And I think they were in this  
25 together. The government wanted to have Zubair to have an

1 extra point, and obviously we didn't object to it. But I  
2 think extra point more than adequately suffices and  
3 substantiates a low -- the lowest range because he is  
4 getting more time than Khaleel. But in truth, and I'm not  
5 saying this to any way suggest that Khaleel should get more  
6 time, but I just think that Zubair is taking a burden on a  
7 debatable point. I mean, he really was more communicative,  
8 but in terms of actions, I don't think they would even  
9 disagree that they were in this together. And that's an  
10 eight-month bump, Your Honor, between Zubair and Khaleel in  
11 terms of the minimum. I believe Khaleel's getting a 92  
12 month minimum possibility, and Zubair's at 100 month  
13 minimum possibility. And I just think that when the  
14 government, we negotiated this plea agreement over a long  
15 period of time. It was a very difficult process to get to  
16 where we're at today. And we were hoping, frankly, that we  
17 wouldn't have to go through a sentencing hearing like we  
18 are today, that the government would simply say, well, you  
19 know, we are willing to go to -- agree to 100 -- to 125  
20 range, given the 5(K)1, given all the things that he's  
21 done, you know, the proffers, et cetera, no record,  
22 circumstances of the case kind of being somewhat out of the  
23 heartland of normal terrorist cases that we see, that they  
24 would just simply say we'll go along with 100. Obviously  
25 they can't object to this if it's the 100 months. But we

1 would ask The Court, because of the things that we've said,  
2 to impose a 100 month sentence. That's a long period of  
3 time for a young man of his age. He'll be close --  
4 probably be close to 40 when he gets out. He -- every  
5 month would make a big difference, and it seems to me that  
6 it would be appropriate under the circumstances given the  
7 totality of the situation here to give him 100 months as  
8 the sentence. I think that would be more than sufficient.  
9 Thank you.

10 THE COURT: Mr. Ahmed, you may speak on your own  
11 behalf before I pronounce sentence.

12 ZUBAIR AHMED: Your Honor, I'd like to, first of  
13 all, thank you for letting me speak on my own behalf,  
14 though my lawyers were speaking on my behalf, but currently  
15 I'm just speaking to you face-to-face. I'd like to start  
16 off by apologizing for my previous ambitions -- my actions,  
17 which were totally wrong. The thing was that I was caught  
18 up in the world events, and what I was thinking at the time  
19 was that the path to violence would somehow help my nation,  
20 which is the Muslims, from getting their freedoms stripped.  
21 I thought by getting caught up in the violent ideology  
22 would somehow gain beneficial gains, but if we look at  
23 history, very recently we see Hamed Hacbani (phonetic)  
24 practiced non-violence, and his whole movement was founded  
25 on non-violence and we see the fruits of that today. What

1 we see today is India, which is a viable democracy. I  
2 believe it's the world's largest -- we see a multitude of  
3 cultures and religions there, and everybody gets to  
4 practice their religion, and people are basically living in  
5 piece. And he did it through non-violence, and it  
6 accomplished a lot. And that's a good example for me to  
7 follow. And I was thinking about that while under house  
8 arrest and while this whole case was unfolding.

9 And another thing I'd like to say is that, I  
10 mean, my actions did produce a lot of harm for my family.  
11 They're the only ones right now that are there for me, and  
12 the fact that I'm not physically there for them and that,  
13 you know, that hurts them, and it's going to continue to  
14 hurt because of my actions, which I shouldn't have done.

15 And as I heard him say, I did have opportunities  
16 which I did engage in. I was better off, I was from middle  
17 class family, I had educational better, I did choose a  
18 different path which I shouldn't have chosen. Currently I  
19 have no Jihad mission, nor will I in the future, and that  
20 is not the case now.

21 Another thing is a year after I came back from  
22 Egypt I met my fiancée, and she's still there for me in a  
23 sense that I couldn't get married due to a myriad of  
24 reasons which I'm not going to bring up in court, but she's  
25 still there, and she said she's going to wait for me when I

1 get out and we are corresponding with each other. And  
2 unfortunately she didn't know -- I mean, well, fortunately  
3 she didn't know about my previous ambition, but what  
4 happened was my past caught up with me, and when I got  
5 arrested she just got thrown into that, what I would say  
6 holding a pot of water. And she too had to suffer because  
7 of my previous actions. And I think that's totally unfair.  
8 And I told her to leave me, and you didn't know about this,  
9 but I'm done with that. I want to marry you and have a  
10 family, and I was quite candid in that. But despite that  
11 fact, she still has decided to stand by me, and I owe it to  
12 her too to be a model citizen, to give back to the United  
13 States of America to be a good citizen and by completely  
14 abolishing any type of violent ideology, bringing harm to  
15 any citizen or any U.S. service men or any human being.

16 I mean, there are a lot of aspects which I can't  
17 continue to follow which have nothing to do with violence.  
18 There's, for a whole multitude of things I can do, and I  
19 did pick up these things while under house arrest. I've  
20 been working with other individuals, while I'm in prison  
21 I'm going to continue to follow that work, which is  
22 basically give no harm to any human being, and basically  
23 all governments will be happy. Also my choice that I made  
24 previously would have put myself into direct conflict with  
25 U.S. traps which is completely wrong, and that's something

1 that would hurt my fellow countrymen. At that time I was  
2 looking at U.S. troops as my enemy but I shouldn't have.  
3 You know, they were also my country. And I can still be a  
4 Muslim and an American citizen simultaneously. At that  
5 point I thought there's only one thing I can be, a Muslim.  
6 And like Bush said, you are with us or against us. At  
7 that point I was, like, man, I'm with them but now it's not  
8 that case. I had, like my counsel said, I was more naive.  
9 At that point I thought that a lot of things would be  
10 happening because of the violence that would culminate into  
11 more positive things for Muslim people. But exact opposite  
12 of that happened. There's just more violence, more hate,  
13 and basically no issues are being resolved both on the  
14 American side and Muslim side.

15 So regarding that, I think that's all I have to  
16 say. Once again, I'd like to apologize for my actions.  
17 I'd like to thank the government for working with counsel  
18 and to coming up with this range. And I'd like to  
19 apologize to my family, the American government, the  
20 American people and the U.S. service men. And I'd like to  
21 thank you for listening to my statement.

22 THE COURT: Mr. Herdman, anything further?

23 MR. HERDMAN: I'm sorry, Your Honor?

24 THE COURT: Anything further from the government?

25 MR. HERDMAN: No. I'm comfortable resting on my

1 previous statement.

2 THE COURT: Mr. Gilbert, anything further on  
3 behalf of your client?

4 MR. GILBERT: Your Honor, did you want to have a  
5 side bar on the other memo that we filed regarding the  
6 5(K)1, or did you hear enough?

7 THE COURT: I'm quite comfortable.

8 MR. GILBERT: Okay. Thank you.

9 THE COURT: It's not my practice to put anything  
10 of that regard on the record. And I think I've been  
11 adequately informed throughout the course of these  
12 proceedings. I think I was made aware fairly early on of  
13 what some of the activities were that were contemplated and  
14 the extent to which they've been carried out. I'm going to  
15 accept the government's recommendation, and I'll explain  
16 why shortly.

17 Formally to pronounce sentence, pursuant to the  
18 Sentencing Reform Act of 1984 and 18 U.S. Code, Section  
19 3553(A), it's the judgment of this court that defendant,  
20 Zubair Ahmed, be and hereby is committed to the custody of  
21 the bureau of prisons to be in prison for a term of 120  
22 months. Upon release from imprisonment, defendant shall be  
23 placed on supervised release for three years which is the  
24 maximum term. Within 72 hours of release from the custody  
25 of the Bureau of Prisons, you shall report in person to

1 United States pretrial service and probation office in this  
2 district or in the district in which he is released. No  
3 fine will be imposed. There will be a special assessment  
4 of \$100 which is due immediately. That's payable -- does  
5 he have that money, the special assessment? If not it will  
6 be taken from his prison earnings, or if the family can pay  
7 for it, that's fine.

8 While on supervised release, the defendant shall  
9 not commit another federal, state or local crime, shall not  
10 illegally possess a controlled substance, shall comply with  
11 the standard conditions adopted by this Court and following  
12 any additional conditions. There's no substance abuse  
13 background, is there?

14 MR. GILBERT: No.

15 THE COURT: Okay. I will waive the drug testing  
16 requirement. And that's not part of the plea agreement, I  
17 take it?

18 MR. GILBERT: No.

19 THE COURT: Defendant shall not possess a  
20 firearm, destructive device or dangerous weapon. He shall  
21 submit his person, residence, place of business, computer,  
22 vehicle to a warrantless search, conducted and controlled  
23 by the U.S. probation officer at a reasonable time and in a  
24 reasonable manner based on reasonable suspicion of  
25 contraband. Evidence of failure to submit to such a search

1 will be grounds for revocation. The defendant shall inform  
2 any other residents that the premises may be subject to  
3 search pursuant to this provision and shall provide the  
4 probation officer with access to any and all requested  
5 financial information, shall undertake diligently to seek,  
6 and if he seeks to diligently maintain lawful, gainful  
7 employment. He shall cooperate in the collection of DNA as  
8 directed by the probation office. Does any party have any  
9 objection to any part of these proceedings that's not  
10 previously been made?

11 MR. HERDMAN: Not from the government.

12 MR. GILBERT: Your Honor, I had neglected to make  
13 this request in our sentencing memorandum. We had asked  
14 that The Court to recommend Oxford Correctional Facility or  
15 Institution in Wisconsin.

16 THE COURT: I'll make that recommendation.

17 MR. GILBERT: And there's a medium security  
18 prison there because it has educational opportunities so on  
19 and so forth.

20 THE COURT: As you're well aware, I have no  
21 control or ultimately even influence over those decisions,  
22 it's entirely up to the Bureau of Prisons. It would be my  
23 anticipation or hunch that given the label that's attached  
24 to the conviction and enhancement and criminal history  
25 category that flows from all that, that may not be likely,

1 but I certainly will recommend it. It makes good sense.

2 MR. HERDMAN: I just want to point out the  
3 government has agreed in the plea agreement that we will  
4 not contest whatever requests by defense counsel with  
5 respect to the location of the incarceration.

6 THE COURT: I assume the bond was discharged,  
7 right?

8 MR. HERDMAN: It just was.

9 MR. GILBERT: It just was. And Judge, if you can  
10 put into the recommendation Oxford or an institution as  
11 close to Chicago --

12 THE COURT: As close to Chicago as possible.

13 MR. GILBERT: -- as possible.

14 THE COURT: Absolutely. I agree. I have no  
15 problem with that at all. The idea of sending somebody  
16 2,000, 3,000 miles away from his family makes no sense.  
17 But as I say, that's the Bureau of Prisons.

18 Mr. Ahmed, although I assume that the plea  
19 agreement -- I know the plea agreement waives any right  
20 that you might otherwise have to appeal; nonetheless, I  
21 have to inform you that to the extent you may have a right  
22 to appeal in order to preserve and protect that right, you  
23 must file a notice of appeal within ten days of the entry  
24 by me, my judgment, which will occur sometime later today.  
25 If you fail to file a timely notice of appeal, you will

1 lose forever whatever rights you might otherwise have had  
2 to challenge your conviction or sentence by way of direct  
3 appeal, post conviction relief, habeas corpus or otherwise,  
4 do you understand that? You do not. Okay. I can explain  
5 it. The plea agreement -- the plea agreement if I --

6 THE DEFENDANT: I understand, sir.

7 THE COURT: Counsel will tell me you have waived  
8 the right to appeal except that does that include an  
9 exception for imposing a sentence in excess of the  
10 statutory maximum?

11 MR. HERDMAN: Yes, Your Honor, or outside the  
12 agreed to --

13 THE COURT: Outside -- so as a practical matter,  
14 you probably, in all likelihood, do not have a right to  
15 appeal; however, if you do, you must exercise that right  
16 within ten days or you will lose it forever.

17 THE DEFENDANT: I understand.

18 THE COURT: To pronounce my reasons under section  
19 3553(A) and the guidelines, obviously extremely serious  
20 offense. The government has said it all in that regard. I  
21 believe that the sentence will promote respect for the law.  
22 I believe that under all circumstances, the sentence is  
23 just. It does take into account the cooperation and the  
24 assistance that the defendant provided following his arrest  
25 and charge in this case. I hope that it affords

1 sufficiently adequate deterrent of you, Mr. Ahmed. As to  
2 that, only time will tell. And I certainly hope -- and  
3 part of the reason for my accepting the government's  
4 representation is to underscore public deterrent effect of  
5 the sentence, as I recall expressing, and although the  
6 circumstances here are somewhat different, but as I recall  
7 expressing at the time, I sentenced the other three  
8 defendants and what at one time was a case including you as  
9 well, people should be aware that if somebody shows up  
10 talking Jihad this and Jihad that, and encouraging people  
11 to engage in acts contrary to the interest and the welfare  
12 of this country and its citizens and its servicemen, the  
13 most sensible thing for anybody who hears that kind of  
14 statement and that sort of entreaty is to assume that that  
15 individual is working for the United States of America and  
16 is not as he purports to be. And unfortunately,  
17 Mr. Mazloun, Mr. Amawi and Mr. El-Hindi did not come to  
18 that conclusion. To some extent, you were exposed to the  
19 same thing with Mr. Griffin, and although the link that you  
20 had with him and the other three defendants never became a  
21 binding chain, nonetheless you did not end in entirely the  
22 intentions that took you to Egypt and were encouraged in  
23 the conversation that you had on that July 4th long ago.  
24 But it is my hope that this sentence, the final analysis  
25 serves as a deterrent to others who might be similarly

1 inclined. The government takes that kind of conduct and  
2 attention very seriously, as it has to. And to some  
3 extent, I am seeking to have you serve as an example of  
4 what happens when people thoughtlessly and foolishly get  
5 caught up in the kinds of thinking that you did. I take  
6 you at your word that you have abandoned those thoughts. I  
7 hope so. Quite candidly, though, were it within my power  
8 to do so, I would impose a much longer period of supervised  
9 release so that there would be reason for us to be able to  
10 ensure that that is the case, but I cannot. But that is my  
11 sentence. Mr. Herdman, need I say or do anything else  
12 before concluding the proceedings as to Mr. Zubair Ahmed?

13 MR. HERDMAN: No, Your Honor. I'm satisfied with  
14 that.

15 THE COURT: Mr. Gilbert?

16 MR. GILBERT: Nothing further.

17 THE COURT: That will conclude the proceedings as  
18 to Mr. Zubair Ahmed. Mr. Herdman, with regard to  
19 Mr. Khaleel Ahmed?

20 MR. HERDMAN: Your Honor, with respect to Khaleel  
21 Ahmed, at the outset I do need to make a motion under  
22 section 5(K) of the U.S. Sentencing Guidelines.

23 THE COURT: Time out. You also -- are there any  
24 dismissals with regard to Mr. Zubair?

25 MR. HERDMAN: Yes. I didn't know if you wanted

1 to do that.

2 THE COURT: Why don't we do it with regard  
3 Mr. Zubair Ahmed.

4 MR. HERDMAN: With respect to Mr. Zubair Ahmed,  
5 the indictment as it -- prior to the superseding  
6 information that was filed, indictment as to Mr. Zubair  
7 Ahmed has to be dismissed.

8 THE COURT: A little louder. It's hard for me to  
9 hear.

10 MR. HERDMAN: I'm sorry. The indictment as  
11 opposed to the superseding information to which Mr. Zubair  
12 Ahmed has pled guilty, the indictment should be dismissed  
13 at this time, Your Honor.

14 THE COURT: Okay.

15 MR. GILBERT: No objection.

16 MR. HERDMAN: And as to Khaleel Ahmed, the  
17 government does have two motions to make. The first being  
18 under Section 5(K) of the U.S. Sentencing Guidelines, and  
19 in accordance with the plea agreement that's been entered  
20 into by the parties, the government, at this point in time,  
21 does move under Section 5(K) for a departure of 12 levels  
22 to an offense level of 26. And the government would also  
23 make a separate motion under the guidelines for acceptance  
24 of responsibility with respect to this defendant. And that  
25 should put us at an offense level of 23, criminal history

1 category six.

2 THE COURT: And I think we previously agreed to  
3 that.

4 MR. SLADE: Your Honor, that does accurately  
5 state that in the plea agreement.

6 THE COURT: Okay.

7 MR. HERDMAN: Now I'm not going to go back into  
8 all --

9 THE COURT: Give me one second.

10 MR. HERDMAN: Sure.

11 THE COURT: Go ahead. I'm sorry. I had to check  
12 something.

13 MR. HERDMAN: I don't think I need to go back  
14 through all of the --

15 THE COURT: I would agree.

16 MR. HERDMAN: But, again, the nature and  
17 circumstances of the offense with respect to Khaleel Ahmed,  
18 it's the same offense we discussed with respect to Zubair.  
19 I just want to point out, though, although there was an  
20 enhancement for Zubair Ahmed in the leadership role he  
21 took, there's no mitigating factor with respect to Khaleel  
22 Ahmed for mitigating the offense.

23 THE COURT: I understand.

24 MR. HERDMAN: So I just wanted to point that out  
25 to The Court. And with respect to Khaleel Ahmed, he -- he

1 was a lockstep partner, I would say, with Zubair Ahmed.  
2 It's true that Zubair was more communicative, I think is  
3 the way Mr. Gilbert put it; however, Khaleel Ahmed was also  
4 in line with Zubair Ahmed with respect to the ambition that  
5 they shared, with respect to planning that went into the  
6 trip to Egypt, with respect to the discussions at the  
7 July 4th ICNA conference, with respect to all of the  
8 communications with Syed Haris Ahmed. As I pointed out in  
9 the sentencing memorandum, I think it's very telling that  
10 there was a December telephone conversation between Syed  
11 Haris Ahmed and Zubair Ahmed at the conclusion of which  
12 Zubair Ahmed and Syed Haris Ahmed agreed that they would  
13 try to meet up down in Atlanta. And the first phone call  
14 that Zubair Ahmed made after he hung up with Zubair Ahmed  
15 was to his cousin Khaleel. And Khaleel knew who Syed Haris  
16 Ahmed was. He was willing to plan and go down to Atlanta.  
17 And in some respects, and this, again's, pointed out in the  
18 sentencing memorandum. In February 2006 there came a point  
19 in time where Zubair Ahmed complained that there were  
20 obstacles in their path with respect to the -- Jihad. And  
21 Khaleel played a role of advising Zubair Ahmed that this  
22 was just another obstacle that's in their path that they  
23 have to overcome in order to achieve this objective. So in  
24 a lot of ways, it's -- this conspiracy is a conspiracy of  
25 equals, although there was a guideline enhancement for

1     Zubair Ahmed. They were close friends and relatives, and  
2     they were -- they shared the same intent. They shared the  
3     same objectives, and Khaleel Ahmed was there every step of  
4     the way in this conspiracy with Zubair. And Khaleel Ahmed,  
5     again, you've seen the materials that have been submitted  
6     by defense counsel, this is a person who had numerous  
7     opportunities. He held a variety of what appeared to be  
8     well-paying jobs, professional type jobs, and he was also  
9     pursuing an education. While all of this was going on, he  
10    still harbored this desire to go overseas and to kill  
11    United States military, to engage in violent Jihad  
12    overseas. Yes, it's true that this was one part of his  
13    life, but all of these other parts of his life and part of  
14    the five-year plan that the Ahmeds had conceived, was that  
15    their entire lives would be devoted to this objective. So  
16    it's natural to conclude that the education, the financial  
17    stability that either one had enjoyed, a lot of steps that  
18    he was taking in his own personal life, all of those had,  
19    at least in the long-term, had some role to play in the  
20    defendant's conspiracy to kill members of the U.S. military  
21    overseas. And I should have said this at the outset, the  
22    government is respected -- with respect to Khaleel Ahmed a  
23    sentence of 108 months. And the offense that the  
24    defendants have already pled to reflects what Mr. Gilbert  
25    was trying to say is that this plan, I think I would

1 dispute the characterization of it not being serious or not  
2 being well thought out, but the street steps they were  
3 taking with regard to completion of this plan and the  
4 activities that the defendants engaged in, that they have  
5 pled to, all of that is reflected in the charge -- they're  
6 not pleading to the 956 conspiracy, they're pleading to the  
7 conspiracy to commit themselves to engaging in violent  
8 Jihad overseas. Khaleel and his attorneys have also tried  
9 to draw comparisons to Wassim Masloun and essentially  
10 saying that --

11 THE COURT: I know. I understand.

12 MR. HERDMAN: -- least culpable.

13 THE COURT: Yep.

14 MR. HERDMAN: All five defendants, and for the  
15 same reasons I outlined with respect to Mr. Zubair, I would  
16 just urge The Court to take a little more into -- with  
17 respect to those facts. But I don't feel a need to rehash  
18 all the circumstances of these defendants because these  
19 defendants engaged in the exact same conduct together.  
20 This was a series, as I said, of equals, and Khaleel Ahmed  
21 was, along with Zubair Ahmed, planning and perpetrating  
22 this conspiracy from a very early age and continued up  
23 until the moment of their arrest is the government's  
24 position. And for that reason, the government is  
25 recommending a sentence of 108 months.

1           MR. SLADE: Thank you, Your Honor. Your Honor,  
2 there's no doubt and there's no dispute that in 2004 my  
3 client, Khaleel Ahmed, was a confused kid. He had been in  
4 the country just a few years. He had spent his whole life  
5 abroad. He had a couple of normal years as a young man.  
6 But his dad in 2002 had a stroke and Khaleel was forced to  
7 give up all of those educational opportunities. He had to  
8 go to work to support his family. And it was at that point  
9 in time that Khaleel got to know his cousin Zubair very  
10 well. Khaleel looked up to Zubair, Your Honor. He was  
11 older, he was a lot more familiar with the U.S. culture.  
12 He was a lot more familiar with the Islamic religion, and I  
13 think even the government would agree Zubair has a very  
14 gregarious big personality. My client's not like that,  
15 Your Honor. Khaleel is very shy. He looked up to Zubair.  
16 They spent a ton of time together. And it was in that  
17 context that my client made a trip to Egypt in 2004. And  
18 when he went, I agree with Mr. Gilbert, there's no doubt  
19 that in their minds they thought we'll go to Egypt and then  
20 we'll use it as a spring board to the battlefield in  
21 somewhere they didn't really know quite honestly.

22           Now, Mr. Herdman says that but for Mr. El-Hindi  
23 and Mohammed Ahmed, there would have been something that  
24 would have mattered. I can't say that would have happened.  
25 We'll never know, but let's look at the facts of what

1 happened. They were there two or three days before  
2 Mohammed Ahmed and the El-Hindi brothers got there. What  
3 happened during those two or three days? Absolutely  
4 nothing. They were there a week after Mohammed Ahmed and  
5 the El-Hindi brothers got there. If they really were  
6 serious about this, something would have happened. What  
7 happened, Your Honor? Nothing.

8 Now, it's clear that what they did when -- what  
9 they had in their minds when they went to Egypt was very  
10 serious, but I do not think the facts in any way support  
11 the government's argument that something serious was going  
12 to happen but for the intervention of the El-Hindi brothers  
13 and Mohammed -- Your Honor, when they came back to the  
14 United States in 2004 they were brought to Cleveland to the  
15 ICNA conference. And Your Honor saw the video many times.  
16 That was the only time they ever met Darren Griffin. The  
17 evidence is undisputed that Khaleel, my client, completely  
18 blew off Darren Griffin. Griffin and Mr. El-Hindi made  
19 repeated attempts to get my client to join in his cell and  
20 my client said I'm too busy. He blew him off. And he had  
21 an opportunity, as Mr. Herdman said, to join with  
22 Mr. El-Hindi and his friends and my client said no. So  
23 Your Honor, it is very serious what he did when he went to  
24 Egypt, but in all serious aspects, it ended there.

25 Your Honor, my client has no criminal history, no

1 history of any violence at all. And Your Honor, my client  
2 was out on pretrial release for more than two years and  
3 Your Honor didn't hear a single peep from him. There were  
4 no violations whatsoever. My client accepted  
5 responsibility, and he surrendered early. Khaleel has now  
6 served 17 months in a maximum security facility. He  
7 surrendered early to get his sentence started.

8 THE COURT: Where is he serving his sentence?

9 MR. SLADE: The MCC of Chicago, they have to be  
10 max because he -- and he knew if he was going to surrender  
11 early to get the clock started, he knew he was going have  
12 to serve harder time than he otherwise would.

13 THE COURT: Is that a permanent place of  
14 designation?

15 MR. SLADE: No, typically it's pretrial.

16 THE COURT: Awaiting sentence.

17 MR. SLADE: I've got some clients who serve the  
18 whole time here, but those have been --

19 THE COURT: Sure. So, Your Honor, my client  
20 accepted responsibility. He pled guilty and he surrendered  
21 early because he wants to get this done. He does not have  
22 these ambitions anymore, and he wants to move on with his  
23 life.

24 MR. SLADE: Your Honor, I want to discuss for a  
25 moment, because I think it's really important, the needs of

1 what unwanted sentencing disparities, and I completely  
2 disagree with the government's analysis and analogies of  
3 this case to the Masloun situation. Giving my client more  
4 time than Mr. Masloun would make absolutely no sense for  
5 four reasons.

6           The first reason is, Your Honor, by definition,  
7 Mr. Ahmed's crime, Khaleel Ahmed's crime, is less serious  
8 than Mr. Masloun's crime. Mr. Herdman said it himself,  
9 what Mr. Masloun was convicted of by a jury of was  
10 conspiracy to kill or maim Americans abroad in violation of  
11 18 U.S.C. 956(A). What Khaleel pled guilty to was a less  
12 serious crime, conspiracy to provide material support for  
13 terrorists, violation of 18 U.S.C. 2335(A). There's no  
14 doubt it's a less serious offense, congress says it's less  
15 serious. The maximum penalty for each is less. And Your  
16 Honor said it was less serious. In the Amawi case, as you  
17 recall, they were all convicted of both charges, both  
18 956(A) and 8, but when Your Honor added up the sentencing,  
19 you gave less time on Count 2 then you would have for Count  
20 A. By definition, what Mr. Khaleel Ahmed did was less  
21 serious than Mr. Masloun, and Mr. Masloun got 100 months.  
22 It doesn't make sense for Khaleel to get more.

23           The second reason is, Your Honor, I'm kind of  
24 surprised at the government's assertion that what Mr. Ahmed  
25 did was more serious than Mr. Masloun because they took the

1 opposite position in their briefing before The Court before  
2 the Masloun sentencing. In that they said things like  
3 Mr. Masloun repeatedly asserted himself by offering money,  
4 recommending recruits and providing training suggestions,  
5 none of that's true of Mr. Khaleel. They said that Masloun  
6 implored Mr. Griffin to accelerate the Jihad training.  
7 That's not true of my client. But the reality is, my  
8 client, what he did is significantly less serious than what  
9 Mr. Masloun was convicted of by a jury.

10 The third reason that he needs to get less time  
11 than Mr. Masloun is just because of the -- it's one simple  
12 fact that nobody can dispute, Mr. Griffin recruited  
13 Mr. Masloun into a cell. He asked Mr. Masloun do you want  
14 to join my Jihadist cell, Mr. Masloun said yes. He asked  
15 my client the same question. Do you want to join my  
16 terrorist cell, and Khaleel said no. There's no basis to  
17 sentence Mr. Khaleel to more time than Masloun.

18 And the fourth reason, I don't want this to go  
19 unnoticed and I kind of fear it is. Mr. Masloun forced the  
20 government to put on a three-month trial. He didn't accept  
21 responsibility, and he's still -- and he's appealing. He  
22 still hasn't accepted responsibility. My client, Khaleel  
23 Ahmed, is sorry for what he did. He wants to pay his debts  
24 to society for what he did. He pled guilty, accepted  
25 responsibility and then cooperated with the government. It

1 is unbelievably difficult for these guys to cooperate with  
2 the government and potentially have to testify as  
3 convicted -- as folks convicted of terrorist-related crime.  
4 They agreed to do it. And that is something that  
5 completely diverges my client's situation from Mr. Masloun,  
6 completely.

7 Mr. Khaleel did, I also don't agree with the  
8 characterization that he was lock-stepped with his cousin  
9 the entire time. The evidence doesn't support that at all.

10 Now, I agree with what Mr. Herdman said they had  
11 the same intent when they went to Egypt, they did. They  
12 planned together and went to Egypt together. But my client  
13 never spoke to Syed Haris. He actually -- my client, I  
14 think the evidence is, he had one conversation with Syed  
15 Haris Ahmed about computer mother boards.

16 THE COURT: Computer?

17 MR. SLADE: My client never had any conversations  
18 with Syed Haris about Jihad. There's a ton of instant  
19 messages and e-mails with Zubair and Syed. That's not true  
20 of Khaleel at all. Khaleel never met Syed Haris Ahmed. So  
21 a lot -- pretty much -- I mean everything that happened,  
22 there are a few events the government's talking about, a  
23 few sporadic contacts, but virtually everything after Egypt  
24 with -- we're asking for a period of 92 months. I think  
25 it's hard to justify a longer sentence. There's no way

1 under all these circumstances that he should get the same  
2 or more than Mr. Masloun did, and I think a sentence of 92  
3 months is more than sufficient to punish him for what he  
4 did, to deter him or others from doing it again, to protect  
5 the public and rehabilitate him.

6 As far as protecting the public, Your Honor --  
7 Your Honor remembers we had two contested bond hearings  
8 when Mr. Khaleel was arrested in February. He came here in  
9 April of 2007. And the government argued that Khaleel was  
10 a flight risk and a danger to the community, and Your Honor  
11 disagreed, and he was out on bond.

12 In December of 2007, the government arrested him  
13 again, and we came back here again and had another  
14 contested bond hearing. Now, this was not because of  
15 anything that Khaleel got wrong because he had been acting  
16 like a choir boy while he was on pretrial release. The  
17 government's new allegations in the superseding indictment  
18 were so serious that it increased his flight risk. Your  
19 Honor, this again, disagreed. He was out on bond for two  
20 years. He did nothing wrong. He surrendered early because  
21 what my client wants to do is apologize to everyone, pay  
22 his debt to society and get back to his family who  
23 desperately needs him.

24 Your Honor, we're asking for a sentence of 92  
25 months, and I'll be able to answer any questions you have.

1 THE COURT: Mr. Herdman, do you want to respond?

2 MR. HERDMAN: I do. With respect to the  
3 analogizing where I tried to de-analogize, I suppose, I  
4 don't even know if that's a word, but to Wassim Masloun.  
5 Just to respond, my point, when Mr. Slade says that the  
6 offense that the defendant has pled to is less serious than  
7 956, all he's talking about is the maximum statutory  
8 penalties that's available, and that's just one  
9 consideration there. When we talk about the severity of  
10 the offense, the statutory offense that defendant has pled  
11 to. But obviously there's more than The Court has to  
12 consider than just the --

13 THE COURT: Well, it seems to me the conduct that  
14 he engaged in along with his cousin extinguishes him from  
15 Mr. Masloun and his conduct.

16 MR. HERDMAN: Yes, Your Honor. And that's the  
17 same point I tried to make with Zubair Ahmed.

18 THE COURT: That's the problem I have, quite  
19 candidly. To some extent they're quite similar. He got --  
20 I believe your client, in a sense, got deeper in, took more  
21 steps both literally and figuratively. He talked less  
22 perhaps, or hardly at all, and certainly what happened  
23 after the Cleveland encounter, after he returned from  
24 Egypt, there was a distance, in fact, if not almost a form  
25 of separation. But if I recall quite distinctly, there was

1 one contact between your client and Mr. Syed Haris Ahmed,  
2 and he basically turned his back on whatever was coming  
3 from Toledo to Chicago to reel him back in. I understand  
4 that.

5 MR. SLADE: I agree that Mr. Masloun did not go  
6 to Egypt. I also agree Mr. Masloun did not say no when  
7 Griffin asked him to join the terrorist cell. My client  
8 did. And I think, Your Honor, congress has said which  
9 defense is more serious in terms of setting the maximum  
10 offense level, the sentencing commission said the same  
11 thing in the guidelines, and that's my argument, Your  
12 Honor.

13 THE COURT: I understand. Go ahead, Mr. Herdman.

14 MR. HERDMAN: And the point Mr. Slade's made and  
15 he made earlier goes to the heart of what we're talking  
16 about here which is, in fact, Khaleel Ahmed may not have  
17 joined a cell that was proposed by Darren Griffin because  
18 he already had a cell with his cousin Zubair Ahmed, and  
19 that cell, before he ever had contact with Darren Griffin  
20 and it existed after he had contact with Darren Griffin,  
21 and that goes to the heart of what this case is about, Your  
22 Honor. These two defendants trusted each other completely  
23 because of their relationship and their friendship. And in  
24 some sense that puts us in an entirely different -- it's  
25 not even similar on that level as if we're trying to draw

1 similarities factually between Wassim Masloun and Khaleel  
2 Ahmed. I think it collapses in the weight of the facts in  
3 this case because they're different. You can't get to  
4 where defense counsel wants us to get by trying to  
5 analogize the behavior here. And it does fall center  
6 around Darren Griffin. And I would say that these  
7 defendants had their own cell already. They didn't need  
8 Darren Griffin to advance what they were trying to do, and  
9 that's the point that stuck out to me the most that Mr.  
10 Slade --

11 THE COURT: Mr. Slade, anything further before I  
12 call upon your client?

13 MR. SLADE: I think the arguments are on the  
14 table.

15 THE COURT: Mr. Ahmed, you have the right to  
16 speak on your own behalf before I proceed to announce  
17 sentence.

18 KHALEEL AHMED: Yes, Your Honor. In contrast of  
19 my cousin, first of all, I want to thank you for giving me  
20 a chance to talk. I'm in contrast with my cousin, I'm a  
21 quiet person so I'm not comfortable enough to speak as  
22 lengthy as my cousin. But after expressing these few  
23 words, I hope you make a relevant decision, it will make a  
24 difference in the decision. The steps I took to pursue  
25 something from my misguided interest lead to a

1 misapprehension of my personality. I'm not a violent  
2 person, and I don't have any violent plans. I've never  
3 hurt anyone in my whole life, and because of that --  
4 because of that behavior, I pled guilty and I accepted  
5 responsibility. I feel remorseful pretty much to  
6 everything. I want to apologize to the government, mostly  
7 my family, especially to you. And while I'm in custody  
8 with the Federal Bureau of Prisons, you know, I plan on  
9 becoming -- I mean being productive to whatever programs  
10 they have to offer. And though I can't change my past, but  
11 as a changed person I believe -- I believe the actions I've  
12 taken were completely wrong, and it's a violent crime, and  
13 as a changed person, I feel more apologetic to -- for what  
14 I've done. And in regards to that, pretty much I leave the  
15 decision on Your Honor and hope for the best.

16 THE COURT: I'm going to impose a term of  
17 100 months, less than the government has requested, more  
18 than the defendant's attorney very eloquently has asked me  
19 to impose obviously. I will express my reasons for doing  
20 so in a moment.

21 Formally to pronounce sentence, pursuant to the  
22 Sentencing Reform Act of 1984, 18 U.S. Code, Section  
23 3553(A), it's the judgment of this court that Khaleel Ahmed  
24 be and hereby committed to the custody of the Bureau of  
25 Prisons be in prison for a term of 100 months. I neglected

1 to mention with regard to his cousin, I will acknowledge to  
2 both, it's my recommendation, I believe in any event it's a  
3 law that they both get credit for the time previously  
4 served.

5           Upon release from imprisonment, defendant shall  
6 be placed on supervised release for a term of three years.  
7 Within 72 hours release from the custody of the Bureau of  
8 Prisons, he shall report in person to the United States  
9 pretrial and probation office in this district or in the  
10 district to which he is released. No fine will be imposed  
11 and all restitution obligations, does have to pay a special  
12 assessment of \$100, hopefully if not paid will be withdrawn  
13 from any prison earnings.

14           While on supervised release, defendant shall not  
15 commit another federal, state or local crime, shall not  
16 illegally possess controlled substances and shall comply  
17 with all the standard conditions adopted by this court and  
18 with the following additional conditions. There's no drug  
19 abuse background right, Mr. Slade?

20           MR. SLADE: Your Honor, That's right. I actually  
21 forgot one thing. I wanted to make the same request as  
22 Mr. Gilbert for him serving confinement in one of two  
23 facilities either Oxford or Terre Haute, Indiana, both of  
24 them have medium security facilities, I think it would be  
25 appropriate for Khaleel also --

1           THE COURT: I'm checking with the deputy. I  
2 don't think that they can is the problem with their  
3 criminal history category.

4           U.S. MARSHALL: It's my understanding the Bureau  
5 of Prisons, due to the terrorism enhancement, initially  
6 they will go to a maximum security facility until they  
7 reclassify further on down the road. That's my best  
8 understanding how the BOP's been going lately.

9           THE COURT: I certainly will recommend it because  
10 it candidly --

11          MR. SLADE: I think we all understand, Your  
12 Honor.

13          THE COURT: One looks past the labels and says,  
14 wait a minute, what kind of custodial circumstances are  
15 needed or best suited here, and that is not my call, but I  
16 will make that recommendation. I always think that it's  
17 important, particularly when defendants as these two  
18 defendants so clearly do, have family who are anxious to be  
19 as supportive as they can. That's crucial to anybody who's  
20 confined, just a matter of common decency, and yet the  
21 Bureau of Prisons has its own criteria and requirements,  
22 and all I can do is recommend, which I will.

23          MR. SLADE: We appreciate Your Honor's help.  
24 Thank you.

25          THE COURT: In any event, I will not impose the

1 drug testing requirement. Defendant shall not possess a  
2 firearm, destructive device, dangerous weapon. While on  
3 supervised release, you shall submit yourself and your  
4 residence, place of business, computer, vehicle to a  
5 warrantless search conducted and controlled by the U.S.  
6 probation office at a reasonable time and in a reasonable  
7 manner based on reasonable suspicion that he's in  
8 possession of contraband or evidence of violation of  
9 supervised release. Failure to submit to such a search  
10 will be grounds for revocation. Defendant shall inform any  
11 other residents that the premises may be subject to search  
12 pursuant to this condition.

13 He shall provide the probation officer with any  
14 and all requested financial information.

15 While on supervised release he shall diligently  
16 seek to obtain, and if he obtains, diligently seek to  
17 maintain lawful gainful employment.

18 He shall cooperate in the collection of DNA as  
19 directed by the probation officer.

20 Let me tell both the defendants because it's my  
21 custom to do so, you can never again lawfully possess a  
22 firearm. To do so would be a very serious federal offense,  
23 and if you are found in possession of a firearm,  
24 particularly in light of this conviction, I have no doubt  
25 that you will be prosecuted under the applicable federal

1 statute and receive a term of the maximum of which at  
2 present I believe is 10 years; is that correct?

3 MR. HERDMAN: Yes, Your Honor.

4 THE COURT: So does any party have any objections  
5 to any part of these proceedings not previously made?

6 MR. HERDMAN: Not for the government.

7 THE COURT: Mr. Slade?

8 MR. SLADE: None, Your Honor.

9 MR. GILBERT: No, Your Honor, we have one  
10 request, though.

11 THE COURT: Let me finish up and then I'll get --  
12 I'll come back to that, Mr. Gilbert.

13 MR. SLADE: Your Honor, I think we'd like to get  
14 the indictment dismissed.

15 THE COURT: That was the next stage.

16 MR. HERDMAN: Okay. You know, I may have missed  
17 this, Your Honor, but with respect to your finding as to  
18 Khaleel Ahmed, are they based on the same findings that you  
19 gave for Zubair Ahmed, obviously different defendant taking  
20 into account his circumstances?

21 THE COURT: I will get into that.

22 MR. HERDMAN: Okay. And now I'm comfortable  
23 dismissing the indictment with respect to Khaleel Ahmed as  
24 well.

25 THE COURT: Okay. Mr. Ahmed, as I undertook to

1 explain to your cousin, and I realize it seems kind of odd,  
2 but I do have to notify you, you may have a right to  
3 appeal, although you've given up your right to appeal in  
4 the plea agreement. In any event, if you have a right to  
5 appeal, you must exercise that right within ten days of the  
6 entry of me by my written judgment, which will occur  
7 sometime today or tomorrow. And if you have such right and  
8 you fail to file timely notice of appeal, you will lose  
9 forever whatever right you might have to challenge your  
10 conviction or your sentence. Do you understand?

11 KHALEEL AHMED: Yes, Your Honor.

12 PROBATION: You waived the fine?

13 THE COURT: And the bond has been discharged  
14 already?

15 MR. SLADE: As to Khaleel, that's true, Your  
16 Honor.

17 THE COURT: Let me say, well, first of all, in  
18 terms of the consideration of the factors under 3553(A) and  
19 the guidelines, I think I've already made clear my view  
20 about the seriousness of the offense, and even though the  
21 ultimate attempt was not accomplished, nonetheless, taking  
22 the steps that were taken in this case constitute a very  
23 serious violation of our law. I hope that I note that  
24 these sentences promote respect for the law. I believe  
25 that the sentence is just on the whole.

1           Mr. Slade, I want you to know that I've listened  
2 very carefully to your comments and have taken them into  
3 consideration. The fact that they've had a favorable  
4 effect on your client's ultimate sentence, if perhaps not  
5 though, perhaps not the effect you had hoped to achieve. I  
6 am, quite candidly, more confident that with regard to  
7 Khaleel Ahmed that the deterrent individual -- deterrent  
8 effect for this entire experience and this sentence have  
9 already been accomplished. On the other hand, I think that  
10 a fundamental importance that the public deterrent effect  
11 be implemented, and that the people simply come to know  
12 that engaging in this kind of conduct and this kind of  
13 activity in taking steps, whatever they may be, steps  
14 having been taken by Mr. Amawi and Mr. Masloun or  
15 Mr. El-Hindi or the steps you took and your cousin took,  
16 they may seem but modest. They may not have much realistic  
17 hope of accomplishment. Nonetheless, given the underlying  
18 intent and objective, they should be and will be certainly,  
19 by this Court, dealt with most severely, and ultimately in  
20 the hope that others learn from this example, and whatever  
21 they may think that they simply do not act in any way  
22 whatsoever in furtherance of those thoughts.

23           I believe that the sentence protects the public  
24 as I believe and hope the one that I impose on Mr. Zubair  
25 Ahmed does.

1           I want to say something, quite candidly. I had  
2 come into this anticipating the likelihood of imposing the  
3 maximum term under the guidelines. I take note, as I hope  
4 the defendants do, of the government's having moved away  
5 from that, and having recommended to me a sentence less  
6 than what it might have sought and might have recommended,  
7 which, quite candidly, I anticipated it would recommend.  
8 And I think that the government is to be commended that at  
9 the end of the day when all of these cases and all of these  
10 proceedings have come to an end, that it was willing to  
11 enter into plea negotiations that I suspect was difficult  
12 for it as they were for the Mr. Zubair Ahmed and  
13 Mr. Khaleel Ahmed. Nonetheless, that on behalf of the  
14 United States, the United States Attorney's Office and  
15 Department of Justice were willing to make a modest gesture  
16 of leniency. And I find that to be entirely appropriate.  
17 Anything further for the government?

18           MR. HERDMAN: No, Judge.

19           THE COURT: Mr. Gilbert?

20           MR. GILBERT: Your Honor, with all due respect  
21 and I say this sincerely, I ask you to reconsider the 120  
22 months for Zubair. I just don't see why there should be a  
23 20 month difference between the two cousins, and  
24 particularly because he was assigned a one-point  
25 enhancement. And the government has always maintained, and

1 they just said earlier that the only difference between the  
2 two individuals is that he was more communicative.

3 THE COURT: Well, he also, Mr. Gilbert, and if  
4 I'm wrong, tell me, because it plays a considerable role,  
5 was quite actively engaged in the communications with  
6 Mr. Syed Haris Ahmed. I realize that he may have played a  
7 role in that individual's ultimate conviction, but if I  
8 read the presentence report correctly, and again, if I did  
9 not, tell me, Mr. Syed Haris Ahmed, of all the people with  
10 any connection with these defendants or indeed with the  
11 other three who are before me, and of course he had none  
12 with them. But nonetheless, he was committed, and he was  
13 abroad literally undertaking to further the aims and  
14 objectives that your client and he were discussing.

15 MR. GILBERT: Judge, what they did was just  
16 communicate with each other, there was no plan between the  
17 two of them. In fact, Mr. Haris encouraged him to come to  
18 meet him in Georgia, and he never did that. I mean, to --  
19 I just don't see how you can justify not giving at least  
20 some consideration to the fact that two of these guys were  
21 in this together. I mean, we already had given Zubair --

22 THE COURT: Mr. Gilbert, rightly or wrongly, I  
23 take from the presentence report and what I know about  
24 their conduct. The conclusion that your client was more  
25 actively involved and more thoroughly committed and played

1 a role of some influence, if not significant influence,  
2 vis-a-vis of his cousin. He was older, he was, I think,  
3 according to my understanding, more dedicated to his  
4 religious beliefs and principals, and I find that his  
5 culpability is more significant.

6 MR. GILBERT: But there's no evidence of that.

7 THE COURT: Pardon?

8 MR. GILBERT: I don't think there's any evidence  
9 of what you just said. I don't think the government is  
10 saying that he induced his cousin to join.

11 THE COURT: I think he played an influential  
12 role. That's my understanding and impression.

13 MR. HERDMAN: And Your Honor, best evidence of  
14 this, the fact that defendant accepted his plea agreement  
15 with the two-level enhancement for assuming a leadership  
16 rope in this conspiracy. And that should end this  
17 argument.

18 MR. GILBERT: One level.

19 MR. HERDMAN: No, it was two levels. And the  
20 defendant got an additional level in terms of his  
21 cooperation. And quite frankly, that was because he was  
22 able to provide --

23 MR. GILBERT: So why doesn't that take care of  
24 the issues that we're talking about? Why doesn't the role  
25 enhancement be sufficient to take into account the

1 differences between these two individuals? When in the  
2 same breath the government gets up there and says that they  
3 were lockstep and the whole process from day one. I mean,  
4 I just -- I'm sorry, I just don't get that defense.

5 THE COURT: Mr. Gilbert, I tried to express  
6 myself as best I can.

7 MR. GILBERT: And the other thing I want to  
8 say --

9 THE COURT: And if you find that there is no  
10 basis in the record, I guess you can't -- you can't appeal.  
11 I candidly wish you could because I would be perfectly  
12 content to have you take the reasons that I've expressed  
13 down to Cincinnati and say Judge Carr was wrong. He didn't  
14 have the basis for the distinction that he drew and the  
15 difference in the sentence. To repeat, it is my impression  
16 and my finding that your client was more culpable both in  
17 terms of his commitment, in terms of his relationship with  
18 his cousin and in terms of the activities that he undertook  
19 with Syed Haris Ahmed. And again, he was the one directly  
20 in contact with Mr. Syed Haris Ahmed who himself was, as I  
21 understand it, abroad literally in various places in this  
22 country and Canada as well; is that correct, Mr. Herdman?

23 MR. HERDMAN: I'm sorry, Your Honor?

24 THE COURT: Syed Haris Ahmed was also active in  
25 Canada?

1 MR. HERDMAN: He traveled to Canada.

2 THE COURT: That's what I mean by --

3 MR. HERDMAN: Yes.

4 THE COURT: And the understanding that I have is  
5 that those travels and that activity was in furtherance  
6 ultimately of objectives that, of the same sort, that bring  
7 your client and his cousin here today. If I'm wrong about  
8 that, tell me.

9 MR. GILBERT: Well, I think, well, to a respect  
10 you're wrong. The activities of Syed Haris going to  
11 Pakistan and going to Canada had absolutely nothing to do  
12 with Zubair. They were not even talking about that.

13 THE COURT: I know they were not talking about  
14 it. But on the other hand, that's what Mr. Syed Haris  
15 Ahmed was about, and I don't suggest that there's a  
16 conspiracy or whatever, but the fire with which your client  
17 was playing in his contacts and communication and  
18 electronic correspondence with Syed Haris Ahmed ultimately  
19 was far more dangerous.

20 Part of what I'm trying to do is to send a  
21 message, somebody starts talking Jihad this and Jihad that,  
22 walk, do not run -- run, do not walk away from that  
23 individual. Your client did not. And I'm trying to tell  
24 anybody else who may be inclined or have the opportunity or  
25 be induced or sucked into that kind of conversation has to

1 understand it has consequences. That ultimately is what  
2 I'm trying to accomplish by making an example of your  
3 client. The same thing I was trying to do with the Amawi,  
4 Masloun and El-Hindi conversation. Steve Hartman was  
5 absolutely correct, take Darren Griffin out of that case  
6 and there is no case. Those three people hardly knew each  
7 other before he put them together and put them into prison.  
8 And anybody out there who hears that kind of talk from  
9 anybody else should run away if they don't want to find  
10 yourselves where your client, Mr. Slade's client, and the  
11 other three defendants in this case now find themselves.  
12 That's the message I'm trying to send. It may not be  
13 heard. It may not be effective. It may not be publicized  
14 by the government. Lord knows I looked in vain at the  
15 press reports in my last sentencing that somebody somewhere  
16 would have picked that up, but they didn't. Fox News, I'm  
17 told, I don't get cable, spent much of that trial with  
18 leading the story, about with pictures of the twin towers  
19 burning, terror in Toledo, but when the time comes for the  
20 news media to pick up on what really happens in these  
21 cases, where are they? But that's all I can do. Your  
22 client persisted in engaging in communications that  
23 ultimately, had he not been caught, captured and confined  
24 and had Mr. Syed Haris not been captured caught and  
25 confined, could have led to the fulfillment of the

1 objectives that took them to Egypt. Now, that may not seem  
2 to make sense to you, but ultimately what this case and  
3 these sentences are trying to accomplish is to make clear  
4 to anybody who in any way has it in his or her mind to  
5 engage in acts of terrorism against the citizens or  
6 soldiers of the United States of America, ought to  
7 understand the dangers of following up on that. You can  
8 think what you want about this country, and I think a lot  
9 of things are probably not particularly popular about what  
10 we're doing in the Middle East and Afghanistan, but I'm  
11 entitled to think so, but I cannot follow up on that  
12 without putting myself at the risk that has led these  
13 clients here. That is why I imposed the sentence I did on  
14 your client. He kept in communication, he kept in  
15 correspondence. He kept thinking about it. He abandoned  
16 his dedication to it only upon being arrested. I believe  
17 that Khaleel, his cousin, literally walked away from that  
18 sooner and more thoroughly, as did Mr. Masloun. That's the  
19 bottom line as to why your client got the additional time  
20 to be an example. Somebody comes to you -- I'll say it for  
21 the third and last time -- talking about Jihad this and  
22 Jihad that and Jihad the other thing and doing the kinds of  
23 things that all five of these defendants did or talked  
24 about doing, beware. Watch out. Because if you start  
25 taking steps, no matter how small, in no absolute terms how

1 significant they are, I can't remember who it was that went  
2 out to the firing range, Clelands in the other case, that's  
3 it. Masloun buys the paintball gun, that's the heaviest of  
4 the armament among the three of them and look what  
5 happened. And that's the message I'm trying to send.  
6 Whether it's even broadcast literally or figuratively or  
7 not. That's all I can do as a Judge. That's what  
8 deterrence, public deterrence is all about, is to warn  
9 people, do this and that's what can happen.

10 Mr. Herdman, anything further from the  
11 government?

12 MR. HERDMAN: No, Your Honor.

13 THE COURT: Mr. Gilbert?

14 MR. GILBERT: Your Honor, I was wondering if my  
15 client could have an opportunity to speak with his family?

16 THE COURT: It's normally my practice to let that  
17 happen if it's agreeable with the marshals.

18 U.S. MARSHALL: For a short amount of time, Your  
19 Honor, but no personal contact.

20 THE COURT: Yeah, whatever they are willing to  
21 permit you to do. That will conclude these proceedings.

22

23

24

25

C E R T I F I C A T E

I certify that the foregoing is a correct transcript  
from the record of proceedings in the above-entitled matter.

s:/Angela D. Nixon

-----  
Angela D. Nixon, RPR, CRR

-----  
Date